

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 06-cr-30117-1-DRH

MONTEZ LAMAR FULLER,

Defendant.

ORDER

HERNDON, Chief Judge:

On July 11, 2011, the Seventh Circuit Court of Appeals entered an Order (Doc. 450) affirming this Court's denial of defendant Montez Fuller's motion for new trial (Doc. 425) and vacating in part the order denying Fuller's motion for the return of his property (Doc. 426). Specifically, the Seventh Circuit affirmed the denial of Fuller's demand for return of \$4,100, but remanded for return of the jewelry, watch, and shoes given that the government had not sought a writ of execution and had no greater claim to the property than Fuller. *See United States v. Kaczynski*, 416 F.3d 971, 974 (9th Cir. 2005).

The Seventh Circuit further ordered this Court, on remand, to initiate collections under the Prison Litigation Reform Act for fees that are due. The Court awaited a statement of Fuller's prisoner trust fund account before initiating

these collections. On September 12, 2011, the Court received a statement of Fuller's prisoner trust fund account from prison officials (Doc. 455).

Thus, in accordance with the Seventh Circuit directive, it is hereby

ORDERED that defendant shall pay the appellate filing fee of \$455.00 as follows:

1. Defendant shall pay an initial partial filing fee of \$51.47. See 28 U.S.C. § 1915(b)(1). The agency having custody of defendant is DIRECTED to transmit this amount from defendant's prison trust fund account to the Clerk of Court upon receipt of this Memorandum and Order.
2. Defendant shall make monthly payments of 20% of the preceding month's income credited to defendant's prison trust fund account until the filing fee is paid in full.
3. The agency having custody of defendant shall forward payments from defendant's account to the Clerk of this Court each time the amount in the account exceeds \$10 until the filing fee is paid in full. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202.

To enable the Bureau of Prisons to remit these payments to the Clerk of Court as required by 28 U.S.C. § 1915, IT IS FURTHER ORDERED that defendant shall complete, sign and return one "Consent Form -- *In Forma Pauperis* Proceedings" to the Clerk of this Court in the envelope provided, within FIFTEEN (15) DAYS of the date of entry of this order. The Clerk is DIRECTED to provide two copies of the appropriate form to defendant with his copy of this Order, along with a pre-addressed return envelope.

Defendant is ADVISED that he is responsible for ensuring payment of the filing fees directed by this Order, and he should ensure that the agency having custody of him transmits the necessary funds. Defendant is FURTHER ADVISED


that nonpayment for any reason other than destitution shall be construed as a voluntary relinquishment of the right to file future suits *in forma pauperis*. *Thurman v. Gramley*, 97 F.3d 185, 187 (7th Cir. 1996), *overruled on other grounds by Walker v. O'Brien*, 216 F.3d 626, 633-34 (7th Cir. 2000). Moreover, defendant is FURTHER ADVISED that failure to comply with this Order will result in a circuit-wide Order barring defendant's ability to file any subsequent case. Defendant is reminded that this Court is carrying out the mandate of the 7th Circuit Court of Appeals in requiring collection of this fee.

Defendant is FURTHER ADVISED that the obligation to ensure full payment of the filing fees imposed by this Order shall not be relieved by his transfer to another prison. Defendant is under a continuing obligation to keep the Clerk of this Court informed of any change in his whereabouts. This shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs.

The Clerk of Court is DIRECTED to mail a copy of this Memorandum and Order to defendant. Upon receipt of defendant's signed consent form, the Clerk shall mail a copy of this Memorandum and Order to the Warden at Terre Haute Federal Correctional Institution with an executed copy of the consent form.

IT IS SO ORDERED.

Signed this 22nd day of September, 2011.


Chief Judge
United States District Court



Digitally signed by David R. Herndon
Date: 2011.09.22 12:13:26 -05'00'